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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/587,127	07/21/2006	Stewart Robertson	36290-0424-00-US (229292)	2920
7590		11/28/2008	EXAMINER	
Gregory J Lavorgna		MAUST, TIMOTHY LEWIS		
Drinker Biddle & Reath		ART UNIT		
One Logan Square		PAPER NUMBER		
18th and Cherry Streets		3751		
Philadelphia, PA 19103		MAIL DATE		
		DELIVERY MODE		
		11/28/2008		
		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/587,127	Applicant(s) ROBERTSON, STEWART	
	Examiner Timothy L. Maust	Art Unit 3751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 July 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>7/21/06</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1-7, 12, 23, 24 and 29-32 are rejected under 35 U.S.C. 102(e) as being anticipated by Back (6715521).

Regarding claims 1, 23 and 24, the Back reference discloses a dispensing apparatus (Figure 1) comprising an inlet port (defined at valve 38) for coupling to an opening of a container (defined by toothpaste tube 40) containing flowable material (i.e., toothpaste) and an outlet port (defined at valve 41) through which the material is dispensed; the inlet and outlet ports being separated by a conduit (defined by chamber 39); a first one-way valve positioned at the inlet port (valve 38) to permit passage of the flowable material from the container into the conduit, and a second one-way valve

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(valve 41) positioned at the outlet port to permit passage of the flowable material from the conduit; and means for selectively varying the volume of the conduit between the inlet and outlet ports to pump the flowable material (defined by pump 36).

Regarding claim 2, wherein the conduit is resiliently deformable (see col. 6, lines 20-24).

Regarding claim 3, wherein the respective inlet and outlet ends of the conduit are displaceable relative to each other to selectively vary the volume of the conduit between the inlet and outlet ports (see col. 5, lines 39-48).

Regarding claim 4, wherein the inlet port is adapted to form a hermetically sealed connection with the opening of the container (inherent to the system).

Regarding claims 5-7, wherein a collar (defined upper portion of chamber 39 where it connects to pump 36; see Figure 13) for receiving the opening of the container and forming a hermetic seal is mounted on, and surrounds, the inlet port.

Regarding claim 12, see housing (35) in Figure 11.

Regarding claims 29-32, the method as claimed would be inherent during normal use and operation of the device (see col. 10, lines 20-35).

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6, 23-25 and 28-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Wang (6016853).

Regarding claims 1 and 23-25, the Wang reference discloses a dispensing apparatus (Figure 1) comprising an inlet port (defined at valve 32) for coupling to an opening of a container (defined by toothpaste container 6) containing flowable material (i.e., toothpaste) and an outlet port (see duckbill valve 211 in Figure 2) through which the material is dispensed; the inlet and outlet ports being separated by a conduit (defined bellows 1); a first one-way valve positioned at the inlet port (valve 32) to permit passage of the flowable material from the container into the conduit, and a second one-way valve (valve 211) positioned at the outlet port to permit passage of the flowable material from the conduit; and means for selectively varying the volume of the conduit between the inlet and outlet ports to pump the flowable material (defined by slide 22).

Regarding claim 2, wherein the conduit is resiliently deformable (see Figures 3A-3C showing the deformation of conduit 1).

Regarding claim 3, wherein the respective inlet and outlet ends of the conduit are displaceable relative to each other to selectively vary the volume of the conduit between the inlet and outlet ports (see col. 2, line 61 – col. 3, line 4).

Regarding claim 4, wherein the inlet port is adapted to form a hermetically sealed connection with the opening of the container (see col. 3, line 9).

Regarding claims 5 and 6, the collar at the end of conduit 1 connects to check valve 31 as seen in Figure 2.

Regarding claim 12, see housing (100) in Figure 1.

Regarding claim 28, the valve is actually a duckbill valve.

Regarding claims 29-32, the method as claimed would be inherent during normal use and operation of the device.

Claims 1-9, 12-15 and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Steiner et al. (4646945).

Regarding claims 1, 3 and 23-25, the Steiner et al. reference discloses a dispensing apparatus (Figure 1) comprising an inlet port (defined at valve 50) for coupling to an opening of a container (12) containing flowable material (i.e., soap) and an outlet port (39) through which the material is dispensed; the inlet and outlet ports being separated by a conduit (32); a first one-way valve positioned at the inlet port (valve 52) to permit passage of the flowable material from the container into the conduit, and a second one-way valve (valve 38) positioned at the outlet port to permit passage of the flowable material from the conduit; and means for selectively varying the volume of the conduit between the inlet and outlet ports to pump the flowable material (defined by slide 22).

Regarding claim 2, wherein the conduit is resiliently deformable (see col. 3, lines 31-34).

Regarding claims 4-7, see collar (34) in Figure 2 and the connection to the container in Figures 1, 3 and 4.

Regarding claim 8, surface 42 tapers inwardly as shown in Figures 3 and 4.

Regarding claim 9, inasmuch structure that is defined by annular sealing ring, flange 14 meets the claim limitation.

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Regarding claims 12-15, see rigid housing and annular flange (defined by retaining clip 60 and flange 33) in Figures 3 and 4.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 16-22 and 26-28 rejected under 35 U.S.C. 103(a) as being unpatentable over Back.

The Back reference discloses the invention substantially as claimed (discussed supra), including:

Regarding claims 16-22, Back further having cradle (44), cam pins (77), sidewalls (63) and push surface (57) and wall mounting projections 56, but doesn't disclose the projections being on the housing. It would have been obvious to one having ordinary skill in the art at the time the invention was made to place projections on the housing of the Back device, since it has been held that a mere reversal of essential working parts of a device involves only routine skill in the art. *In re Einstein*, 8 USPQ 167

Regarding claims 26-28, the Back reference doesn't disclose the inlet port being perforated and the valves being an umbrella and duckbill valve. It would have been an obvious matter of design choice to employ a perforated inlet port and umbrella and

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duckbill valve on the Back device, since applicant has not disclosed that the above design solves any stated problem and it appears that the invention would perform equally with or without a perforated inlet port, umbrella valve and duckbill valve.

Further, it would be obvious to try substituting the above valves for the valves on the Back device since these valves are well known alternatives that would produce expected results.

Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Steiner et al.

Regarding claim 10, the Steiner et al. reference discloses the invention substantially as claimed (discussed supra), but doesn't disclose the sealing ring and collar being integral. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the sealing ring and collar integral, since it has been held that forming in one piece an article that has formerly been formed in two pieces and put together involves only routine skill in the art. *Howard v. Detroit Stove Works*, 150 U.S. 164 (1893).

Regarding claim 11, Steiner et al. are silent as to the collar being made of silicone. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the Steiner collar of a silicone material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

In re Leshin, 125 USPQ 416

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited prior art pertains to various dispensers having similar structure to that of the Applicant's device.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy L. Maust whose telephone number is (571) 272-4891. The examiner can normally be reached on Mon. - Thur. 7:00-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Huson can be reached on (571) 272-4883. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Timothy L Maust/
Primary Examiner
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11/25/08

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